

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARRIVALSTAR S.A. and MELVINO
TECHNOLOGIES LIMITED,

Plaintiffs,

vs.

KING COUNTY,

Defendant.

No. 11-cv-0461-MJP

**KING COUNTY'S ANSWER TO THE
COMPLAINT, AFFIRMATIVE
DEFENSES AND COUNTERCLAIMS**

JURY TRIAL DEMANDED

Defendant King County, by and through its attorneys, hereby answers the complaint for patent infringement (the "Complaint") filed by plaintiffs ArrivalStar S.A. and Melvino Technologies Limited (together, "Plaintiffs"). King County denies each and every allegation in the Complaint that is not expressly admitted. King County specifically responds as follows:

Nature of the Lawsuit

1. King County admits that the Complaint purports to state claims for patent infringement under Title 35 of the United States Code. The remaining statements of this paragraph are legal conclusions to which no response is required.

The Parties

2. King County lacks sufficient information to admit or deny the allegations in Paragraph 2 of the Complaint and therefore denies them.

1 3. King County lacks sufficient information to admit or deny the allegations in
2 Paragraph 3 of the Complaint and therefore denies them.

3 4. King County lacks sufficient information to admit or deny the allegations in
4 Paragraph 4 of the Complaint and therefore denies them.

5 5. King County admits only that it is now and at all times material hereto has been
6 a home rule charter county under the laws of the State of Washington, and King County Metro
7 Transit is a division of King County Department of Transportation with a place of business at
8 201 S. Jackson St., Seattle, Washington 98104. King County admits that it transacts business
9 in this judicial district. King County denies the remaining allegations of paragraph 5.

10 6. Paragraph 6 states a legal conclusion to which no response is required.

11 **Defendant's Acts of Patent Infringement**

12 7. King County denies the allegations of paragraph 7 of the complaint.

13 8. King County denies the allegations of paragraph 8 of the complaint.

14 **Prayer for Relief**

15 King County denies that Plaintiffs are entitled the requested relief or any relief.

16
17 **KING COUNTY'S AFFIRMATIVE DEFENSES**

18 King County asserts the following affirmative defenses in response to the Complaint.
19 King County reserves its right to allege additional affirmative defenses as they become known
20 through the discovery process.

21 **FIRST AFFIRMATIVE DEFENSE**

22 King County has not infringed and does not infringe any valid claim of any of the
23 asserted patents, 6,714,859 ("the '859 patent"), 6,804,606 ("the '606 patent"), 6,904,359 ("the
24 '359 patent"), and 7,030,781 ("the '781 patent").

SECOND AFFIRMATIVE DEFENSE

The claims of the '859, '606, '359, and '781 patents are invalid because they fail to satisfy the requirements of 35 U.S.C. § 101, et seq., including, without limitation, Sections 101, 102, 103, and 112.

THIRD AFFIRMATIVE DEFENSE

By reason of the proceedings in the U.S. Patent and Trademark Office during the prosecution of the applications which resulted in the issuance of the '859, '606, '359, and '781 patents, Plaintiffs are estopped from claiming infringement by King County of one or more claims of the '859, '606, '359, and '781 patents.

FOURTH AFFIRMATIVE DEFENSE

The allegedly infringing services provided by King County have substantial non-infringing uses and therefore do not contribute to the infringement of the claims of the '859, '606, '359, and '781 patents.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of laches, waiver, and/or equitable estoppel.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, at least in part, pursuant to 35 U.S.C. § 286 for all events occurring more than six years prior to the filing of this action.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovering damages to the extent King County was not provided with notice pursuant to 35 U.S.C. § 287.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to any form of an injunction because Plaintiffs have not suffered and will not suffer irreparable injury as a result of King County's conduct and Plaintiffs have an adequate remedy at law.

1 **NINTH AFFIRMATIVE DEFENSE**

2 Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

3
4 **KING COUNTY'S COUNTERCLAIMS**

5 King County for its counterclaims against Plaintiffs alleges as follows:

6 **Nature of the Action**

7 1. This is a declaratory judgment action seeking declarations that U.S. Patent Nos.
8 6,714,859 ("the '859 patent"), 6,804,606 ("the '606 patent"), 6,904,359 ("the '359 patent"), and
9 7,030,781 ("the '781 patent") are invalid and are not infringed by King County. King County
10 seeks judgment under the patent laws of the United States, 35 U.S.C. §101 et seq., and the
11 Declaratory Judgment Act, 28 U.S.C. 2201 and 2202.

12 **The Parties**

13 2. King County is a home rule charter county under the laws of the State of
14 Washington, and King County Metro Transit is a division of King County Department of
15 Transportation with a place of business at 201 S. Jackson St., Seattle, Washington 98104.

16 3. Upon information and belief, ArrivalStar S.A. is a corporation organized under
17 the laws of Luxembourg and having offices at 67 Rue Michel, Welter L-2730, Luxembourg.

18 4. Upon information and belief, Melvino Technologies Limited is a corporation
19 organized under the laws of the British Virgin Island of Tortola, having offices at P.O. Box
20 3152, RG Hodge Building, Road Town, Tortola, British Virgin Islands.

21 **Jurisdiction and Venue**

22 5. This Court has subject matter jurisdiction over King County's counterclaims
23 pursuant to 28 U.S.C. §§ 1331 and 1338(a), and the Declaratory Judgment Act, 28 U.S.C.
24 §§ 2201 and 2202.

25 6. Plaintiffs have consented to personal jurisdiction in this venue by pursuing an
26 action for patent infringement in this jurisdiction as set forth in Plaintiffs' Complaint.

7. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and § 1400(b).

COUNT I
(Declaratory Judgment of Non-infringement of the '859 Patent)

8. King County realleges paragraphs 1-7 of its Counterclaims as if fully set forth herein.

9. By virtue of Plaintiffs' filing of the Complaint, an actual controversy exists between King County and Plaintiffs with respect to King County's alleged infringement of the '859 patent.

10. King County is entitled to a judicial declaration that it has not infringed and does not currently infringe any valid claim of the '859 patent directly or indirectly, by inducement or by contribution, literally or under the doctrine of equivalents.

COUNT II
(Declaratory Judgment of Invalidity of the '859 Patent)

11. King County realleges paragraphs 1-10 of its Counterclaims as if fully set forth herein.

12. By virtue of Plaintiffs' filing of the Complaint, an actual controversy exists between King County and Plaintiffs with respect to the validity of the '859 patent.

13. The claims of the '859 patent are invalid because they fail to satisfy the requirements of 35 U.S.C. § 101, et seq., including, without limitation, sections 101, 102, 103, and 112.

14. King County is entitled to a judicial declaration and order that the '859 patent is invalid.

COUNT III
(Declaratory Judgment of Non-infringement of the '606 Patent)

15. King County realleges paragraphs 1-14 of its Counterclaims as if fully set forth herein.

16. By virtue of Plaintiffs' filing of the Complaint, an actual controversy exists between King County and Plaintiffs with respect to King County's alleged infringement of the

1 '606 patent.

2 17. King County is entitled to a judicial declaration that it has not infringed and does
3 not currently infringe any valid claim of the '606 patent directly or indirectly, by inducement or
4 by contribution, literally or under the doctrine of equivalents.

5 **COUNT IV**

6 **(Declaratory Judgment of Invalidity of the '606 Patent)**

7 18. King County realleges paragraphs 1-17 of its Counterclaims as if fully set forth
8 herein.

9 19. By virtue of Plaintiffs' filing of the Complaint, an actual controversy exists
10 between King County and Plaintiffs with respect to the validity of the '606 patent.

11 20. The claims of the '606 patent are invalid because they fail to satisfy the
12 requirements of 35 U.S.C. § 101, et seq., including, without limitation, sections 101, 102, 103,
13 and 112.

14 21. King County is entitled to a judicial declaration and order that the '606 patent is
15 invalid.

16 **COUNT V**

17 **(Declaratory Judgment of Non-infringement of the '359 Patent)**

18 22. King County realleges paragraphs 1-21 of its Counterclaims as if fully set forth
19 herein.

20 23. By virtue of Plaintiffs' filing of the Complaint, an actual controversy exists
21 between King County and Plaintiffs with respect to King County's alleged infringement of the
22 '359 patent.

23 24. King County is entitled to a judicial declaration it that has not infringed and does
24 not currently infringe any valid claim of the '359 patent directly or indirectly, by inducement or
25 by contribution, literally or under the doctrine of equivalents.

26 **COUNT VI**

(Declaratory Judgment of Invalidity of the '359 Patent)

25. King County realleges paragraphs 1-24 of its Counterclaims as if fully set forth

1 herein.

2 26. By virtue of Plaintiffs' filing of the Complaint, an actual controversy exists
3 between King County and Plaintiffs with respect to the validity of the '359 patent.

4 27. The claims of the '359 patent are invalid because they fail to satisfy the
5 requirements of 35 U.S.C. § 101, et seq., including, without limitation, sections 101, 102, 103,
6 and 112.

7 28. King County is entitled to a judicial declaration and order that the '359 patent is
8 invalid.

9 **COUNT VII**
10 **(Declaratory Judgment of Non-infringement of the '781 Patent)**

11 29. King County realleges paragraphs 1-28 of its Counterclaims as if fully set forth
12 herein.

13 30. By virtue of Plaintiffs' filing of the Complaint, an actual controversy exists
14 between King County and Plaintiffs with respect to King County's alleged infringement of the
15 '781 patent.

16 31. King County is entitled to a judicial declaration that it has not infringed and does
17 not currently infringe any valid claim of the '781 patent directly or indirectly, by inducement or
18 by contribution, literally or under the doctrine of equivalents.

19 **COUNT VIII**
20 **(Declaratory Judgment of Invalidity of the '781 Patent)**

21 32. King County realleges paragraphs 1-31 of its Counterclaims as if fully set forth
22 herein.

23 33. By virtue of Plaintiffs' filing of the Complaint, an actual controversy exists
24 between King County and Plaintiffs with respect to the validity of the '781 patent.

25 34. The claims of the '781 patent are invalid because they fail to satisfy the
26 requirements of 35 U.S.C. § 101, et seq., including, without limitation, sections 101, 102, 103,
and 112.

1 (9) King County be granted such other different and additional relief as this Court
2 deems just and proper.

3 Dated: May 27, 2011.

4 DLA PIPER LLP (US)

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on May 27, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys:

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DATED this 27th day of May, 2011 at Seattle, Washington.

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